

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TODD MICHAEL TOMASELLA,
Plaintiff,

v.

DIVISION OF CHILD SUPPORT, et al,
Defendants.

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CIVIL ACTION NO. 3:20-cv-00476-S-BH

Referred to U.S. Magistrate Judge

DEFENDANT WARREN KENNETH PAXTON'S MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED COMPLAINT

TO THE HONORABLE MAGISTRATE JUDGE IRMA CARRILLO RAMIREZ:

DEFENDANT, Warren Kenneth Paxton¹, Attorney General for the State of Texas, by and through his attorneys, files this Motion to Dismiss Plaintiff's First Amended Complaint, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

I. INTRODUCTION

Plaintiff, Todd Michael Tomasella, appearing pro se, complains, through this action that his constitutional rights were violated because he was ordered to pay child support when his former wife was awarded custody of their son. Further, Plaintiff claims he was falsely arrested and incarcerated when he failed to timely pay said child support. Plaintiff brings several causes of action against various Defendants pursuant to 42 U.S.C. § 1983, as well as making claims for state torts and a Racketeer Influenced and Corrupt Organizations Act (RICO) violation. In lieu of filing

¹ Plaintiff also names the Division of Child Support as a defendant in his Complaint, however, the Division of Child Support is not a legal entity capable of being sued but is a division of the Office of the Attorney General for which Defendant Paxton is the state official. For the purposes of this motion, it is assumed that Plaintiff intended to sue Defendant Paxton whose name appears on the Complaint, the summons, and the First Amended Complaint. [DKT 3, DKT 22, and DKT 60]. See *Anthony of the Family Baker v. Child Support Div*, No. 3:18-cv-341-C-BN at *6, 2018 WL 4858743 (N.D. Tex., Dallas Division, Sept. 18, 2018).

an Answer, Defendant Paxton moves to dismiss Plaintiff's First Amended Complaint because (1) this Court lacks jurisdiction to hear Plaintiff's claims because they are barred by immunity and the *Rooker-Feldman* Doctrine; and (2) Plaintiff fails to state a claim for which relief can be granted because his claims are all time-barred and he fails to make a *prima facie* case for any alleged violation of federal or Texas law. Defendant's arguments are fully set forth in the Brief in Support filed concurrently.

WHEREFORE, Defendant Warren Kenneth Paxton, Attorney General, prays that the Court dismiss, with prejudice, all claims in Plaintiff's First Amended Complaint and that Plaintiff takes nothing by his suit and that Defendant recovers all relief, special or general, at law or in equity, to which he shows himself justly entitled, including but not limited to his costs incurred herein.

Respectfully submitted,

KEN PAXTON

Attorney General of Texas

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First Assistant Attorney General

GRANT DORFMAN

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/s/ Yvonne D. Bennett

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been served via PACER
electronic notification and email on January 28, 2021, on:

Pro Se Plaintiff

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/s/ Yvonne D. Bennett
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